IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SIXTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No. 8334 of 2005

Between:

M/s. Tirumala Milk Products Pvt. Ltd. Kadiveda (V) Nellore District, represented by its Managing Director, B. Brahma Naidu, S/o. Hanumaiah, aged about 49 years

..... PETITIONER

AND

1. The Government of India, represented by its Secretary, Ministry of Finance, New Delhi.
2. The Assistant Commercial Tax Officer (Prl.) Gudur, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, Order or Direction particularly in the nature of Writ of Mandamus declaring the proceedings of the Assistant Commercial Tax Officer (Prl), Gudur dt. 28-2-2005 P.R.No. 1/2004-05 (CST) as served on the Petitioner on 30-3-2005 purported to have been issued under Sections 10 and 10A of the Central Sales Tax Act, 1956 imposing penalty on the petitioner for the alleged misuse of declaration forms in respect of the certain inter-State purchase of goods mentioned in the impugned proceedings as illegal, arbitrary, without authority of law and without jurisdiction as also ultra vires the provisions of Sections 10, 10A read with 8(2) of the Central Sales Tax Act, 1956 in the absence of the assessment

proceedings issued by the prescribed competent assessing authorities of the inter-State selling dealers of other States, rejecting the declaration forms stated to have been issued by the petitioner and levying the respective State rate of tax and grant such other relief or reliefs as are deemed fit and proper in the circumstances of the case.

Counsel for the Petitioner :Mr. M.V.J.K.KUMAR

Counsel for the Respondent No.1: Mr.A.Rajasekhar Reddy

Sr.Central Govt. Standing Counsel.

Counsel for Respondent No.2: G.P. for Commercial Taxes.

The Court made the following :

ORAL ORDER:

(per Honourable Sri Justice B.Sudershan Reddy)

We have heard the learned counsel for the petitioner as well as the learned Special Standing Counsel for the Department, and, at the request, taken up the matter for disposal even at the admission stage.

Rule nisi.

The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a Writ of Mandamus declaring the proceedings of the Assistant Commercial Tax Officer (Principal), Gudur, dated: 28.2.2005 in P.R.No. 1/2004-2005 (CST), as served on the petitioner on 30.3.2005 purported to have been issued under Sections 10 and 10A of the Central Sales Tax Act, 1956 imposing penalty on the petitioner for the alleged misuse of declaration forms in respect of certain inter-State purchase of goods mentioned in the impugned proceedings as illegal, arbitrary and without any authority of law apart from being ultra vires the provisions of Sections 10 and 10A read with Section 8(2) of the Central Sales Tax Act, 1956.

The second respondent herein issued notice dated: 10.1.2005 to the petitioner

herein requiring the petitioner to file the objections, if any, against the proposal to levy penalty of Rs.33,50,100/- being one and half times the tax that could have been levied under Section 8(2) of the Central Sales Tax Act on the purchase value of Rs.2,13,16,219/- as noted in the show-cause notice.

The gravamen of the allegation levelled against the petitioner, is that he is a dealer registered under the provisions of Section 12 of A.P.G.S.T. Act and also Section 7 of the CST Act. That during the course of verification of the C-Declarations utilized by the petitioner and furnished before the Assessing Authority on 6.1.2005, it was found that the petitioner-dealer had, among others, made the purchases mentioned in the show-cause notice during the years 2002-03 and 2003-04 and issued C-declarations as detailed in the notice. That on verification of CST registration record of the dealers, it disclosed that the dealers have not got the above goods included in their registration informing that they would purchase them in the course of their business. It is alleged that the dealers have issued C-declarations to the selling dealers and represented that goods of such class were covered by the Certificate of Registration. The sum and substance of the allegation is that the petitioner-dealer falsely represented while purchasing the goods that such class of goods are covered by Certificate of Registration. It is unnecessary to notice further details in this regard.

Suffice it to notice that the petitioner submitted detailed objections on 26.1.2005 in response to the show cause notice, inter alia, denying all the allegations and averments made therein in the show cause notice. It is specifically pleaded that the quantification of proposed penalty is without any basis or foundation inasmuch as the State of Andhra Pradesh is not entitled to any tax, as the petitioner has not effected any inter-State sale or inter-State purchase of goods from other States and they would not attract any tax payable to the State of Andhra Pradesh.

The petitioner, inter alia, requested the authority to provide an opportunity of personal hearing before deciding the matter on merits. The request as to the personal hearing is couched in the following manner:

> " We accordingly request that *after hearing us* and considering the further objections that may be placed *at the time of hearing* the proposed levy of penalty may please be dropped."

It is, thus, clear that the petitioner in unmistakable terms made a request to the

authority to provide an opportunity of oral hearing.

The learned Special Standing Counsel, upon instructions and on the basis of the record, submits that the second respondent did not provide any opportunity of personal hearing to the petitioner, though such a request has been made. The record does not contain any reasons as to why the request of the petitioner for personal hearing has not been acceded to. It is not a case where a request for providing an opportunity of personal hearing has been considered and rejected. The second respondent totally ignored the request of the petitioner and passed the impugned order.

Sri M.V.J.K. Kumar, learned counsel for the petitioner, inter alia, submits that the impugned order is liable to be quashed on the simple ground of the order being violative of the Principles of Natural Justice. The learned counsel contended that the proposed action as indicated in the show-cause notice is fraught with serious consequences that result in adverse civil consequences, and, in such an event, the respondent is duty bound to provide an opportunity of personal hearing when such a request is made by the dealer, to whom, the show-cause notice has been issued.

We find substantial force in the submission made by the learned counsel for the petitioner. It is not as if the impugned order has not resulted in any drastic civil consequences. By the impugned order, huge amount of penalty is imposed on the petitioner-dealer. In our considered opinion, the second respondent ought to have taken the request of the petitioner into consideration and provided an opportunity of personal hearing before passing the impugned order. Since no explanation is forthcoming as to why the request of the petitioner could not be considered for providing an opportunity of personal hearing, we find it difficult to sustain the impugned order.

In such view of the matter, it is unnecessary to go into the other contentions urged by the learned counsel for the petitioner on merits. The impugned order is liable to be quashed on the ground of it being violative of the Principles of Natural Justice. The impugned order is, accordingly, quashed, and, the matter is remitted to the second respondent for fresh consideration in accordance with law, for which purposes, the second respondent shall provide an opportunity of oral hearing to the petitioner. The petitioner is accordingly directed to appear before the second respondent on 13.5.2005 at 11 a.m. The learned counsel for the petitioner

undertakes that no adjournment on that date of hearing shall be prayed for by the petitioner and the petitioner shall file all his further objections, if any, in the matter and proceed with the hearing of the case. The second respondent is accordingly directed to hear the petitioner in-person or through an agent, or, Advocate, duly instructed, and pass appropriate speaking order and communicate the same to the petitioner.

The Writ Petition is accordingly allowed to the extent indicated above, without any order as to costs.

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B.SUDERSHAN REDDY, J.

26.4.2005.

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C.V.RAMULU, J.

VR.

Note:

Issue cc by 29.4.2005.

(BO)

To

1. The Secretary Government of India, Ministry of Finance, New Delhi.
2. The Assistant Commercial Tax Officer (Prl.) Gudur, Nellore District.
3. Two CCs to Government Pleader for Commercial Taxes, High Court Buildings,

Hyderabad (OUT).

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